

WASHINGTON CHROMIUM CO.

IBLA 81-1004

Decided December 23, 1981

Appeal from the decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 24512 through OR MC 24531.

Reversed.

1. Administrative Practice -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

2. Administrative Practice -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Where the envelope containing a mining claimant's evidence of annual assessment

work required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its post office box address in Portland, Oregon, was postmarked in Seattle, Washington, on Dec. 29, 1980, and it is established that whereas in the ordinary course of mail the letter would have been delivered to the state office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. nevertheless would not have been picked up by the state office until a day later, the evidence of assessment work is presumed to have been filed on December 30, even though the date and time stamp of the state office indicates that it was not received until 7:30 a.m. on Dec. 31.

APPEARANCES: Grace Tebrink, Secretary, Washington Chromium Company, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Washington Chromium Company 1/ appeals the Oregon State Office, Bureau of Land Management (BLM), decision of June 12, 1981, which rejected the evidence of assessment work submitted for the 1980 assessment year, and deemed the unpatented mining claims, 2/ OR MC 24512 through OR MC 24531, abandoned and void pursuant to section 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.2-1. The proof of labor bears a date and time stamp of BLM showing its receipt at 7:30 a.m., December 31, 1980.

Appellant avers that the proof of labor was mailed from Auburn, Washington, December 27, 1980, a Saturday, in ample time to reach Portland, Oregon, by December 30, a Tuesday. In any event, appellant

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1/ The statement of reasons is signed by Grace Tebrink, Secretary; Samuel W. Henderson, President; Paul A. Tebrink, Vice-President; and Nancy T. Workman, stockholder.

2/ The claims involved are the Whistler, Jordon, Dare, Good Hope, Opportunity, Pardner, Danny, Last Notch, Willie, Joane, Bumper, Ranger, Zoeanne, Grant, Franklin, Donna, Grace, and Roselode mining claims, OR MC 24512 through OR MC 24531.

thought the postmark on the envelope would govern, as in the case of income tax returns postmarked before midnight, April 15. Appellant suggests the Oregon State Office's practice of never picking up mail from the Portland Post Office after 1 p.m. works to the disadvantage of the public. Appellant asserts that it has performed assessment work on the claims every year since 1931, and that the present forfeiture is a very drastic and terrible penalty.

We concede the validity of appellant's charge that persons using the mails for the transmittal of documents do not receive equal consideration with persons filing documents over the counter at the state office in a situation where the local office routinely fails to make any mail pick-up after 1 p.m. and where there is a strong likelihood that mail will be placed in the post office box between 1 p.m. and 4:15 p.m. on the ordinary working day.

The postmaster of Portland, Oregon, has advised the Board that although the Postal Service standard for delivery of mail between Seattle and Portland is 2 days, much mail from Seattle gets delivered to Portland overnight, and that during the period December 27, 1980, to January 23, 1981, at least 15 percent of the first class mail from Seattle was delivered overnight. He concluded that there is a good possibility that appellant's envelope was placed in BLM's post office box (No. 2965) before 4:15 p.m. on December 30.

[1] Delay problems arising from the transmittal by mail of documents that are required to be filed in a particular BLM office by a specified date are not new, and the rule is well established generally that the deposit in a post office of a letter properly addressed, with duly prepaid postage, creates a rebuttable presumption that the letter was received by the addressee in the ordinary course of mail. Dunlop v. United States, 165 U.S. 486, 495 (1897); Rosenthal v. Walker, 111 U.S. 185, 193 (1884); H. C. Hathorn, A-30257 (Feb. 3, 1965); Norma J. Rose, 75 I.D. 37 (1968).

In this case, it is undisputed that appellant's evidence of assessment work was correctly addressed to the BLM Oregon State Office and deposited in the mail in Seattle with proper prepayment of postage on December 27, 1980. In the ordinary course of mail it would have arrived in Portland by December 30, 1980, and would have been deposited in BLM's post office box in Portland before 4:15 p.m. on that same day. Also, if it were placed in BLM's box between the hours of 1 p.m. and 4:15 p.m., it would not have been taken from the post office box by a BLM employee until the following day. In these circumstances, under the rule noted above, there is a presumption that appellant's evidence of assessment work was, at least, placed in the addressee's post office box prior to 4:15 p.m. on December 30, 1980. The question that remains to be determined is whether or not the deposit of mail in BLM's post office box is equivalent to filing it over the counter in the state office, for the Department's regulations specify that the evidence of assessment work must be filed in the state office on or before December 30 (43 CFR 3833.2-1), and that filing is accomplished when the document is received and date and time stamped by the BLM office.

Substantially the same question was considered by the Department in Norma J. Rose, supra. Ms. Rose was required by the Department's regulations to submit to the New Mexico Land Office a statement of interest and the qualifications of the two other parties named as having a one-third interest each in any lease issued in response to Ms. Rose's offer, which had received first priority consideration for the lands described. Ms. Rose had filed her offer April 24, 1967, so the required statements were due in the New Mexico Land Office no later than May 9, 1967. They were stamped as received at 10 a.m., May 10, 1967. The instruments were deposited in the post office, Cheyenne, Wyoming, on the morning of May 8 for transmittal by airmail to Santa Fe, where the envelope should have been received about 1:31 p.m., May 9, and according to the mail superintendent, would have been placed in the BLM post office box before 4 p.m. that same day. As the land office did not pick up mail from its post office box after 1 p.m., the instruments were not processed by the land office until after the morning pickup on May 10.

[2] The Department held that where mail is properly addressed and deposited in United States mails with postage duly prepaid thereon, there is a rebuttable presumption that it was received by the addressee in ordinary course of mail. Placement of an envelope in a mail box accessible to the land office during the hours in which the land office was open for filing of documents constituted delivery to and receipt by the land office. See Central Paper Co. v. Commissioner, 199 F.2d 902 (6th Cir. 1952).

[3] Applying the foregoing principles to the facts of this case, we hold that where the envelope containing a mining claimant's evidence of the annual assessment work required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its post office box address in Portland, Oregon, was postmarked in Seattle, Washington, on December 29, 1980, and it is established that in the ordinary course of mail it would have been delivered to the State Office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. would not have been picked up by the State Office until a day later, the evidence of assessment work is presumed to have been filed on December 30, even though the date and time stamp of the State Office indicates that it was not received until December 31. Accordingly, we conclude that appellant's evidence of assessment work for 1980, in the absence of any evidence to the contrary, must be presumed to have been filed in the Oregon State Office on December 30, 1980, within the period prescribed for such filing. 3/

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3/ The result in this case must be carefully distinguished from a situation either where BLM does not have continuous access to its post office box during all business hours, or where the Postal Service makes its normal delivery to BLM's official street address and the mail remains under Postal Service control until the delivery is made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to the Oregon State Office, BLM, for appropriate action.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

